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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/804,403	03/12/2001	Aaron Strand	8160.16016-FOR DIV	1089

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RYAN KROMHOLZ & MANION, S.C.  
POST OFFICE BOX 26618  
MILWAUKEE, WI 53226

EXAMINER
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MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 12/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/804,403	Applicant(s) STRAND ET AL.	
	Examiner Robert Madsen	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,6-9,14,16,18,19,21,23,41,42,46-49,54,56,58,59,61,75-77,82-86,100-102 and 104 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

Continuation of Disposition of Claims: Claims pending in the application are 1,2,6-9,14,16,18,19,21,23,41,42,46-49,54,56,58,59,61,75-77,79,82-86,93,100-102 and 104.

**DETAILED ACTION**

1. The Amendment filed August 7, 2003 has been entered. Claims 1,2,6-9,14,16,18,19,21,23,41,42,46-49,54,56,58,59,61,75-77, 79,82-86,93,100,101,102 and 104 remain pending in the application. It is noted that claim 101 was not stated as pending but the Amendment includes 101 as currently amended.
2. In light of applicant's arguments the rejection of claims 1, 2,6-9,14 made under 35 U.S.C. 102(e) as being clearly anticipated by Dobreski (US 5682730) has been withdrawn.
3. In light of applicant's arguments the rejection of claims 1,2,6-9,14,18,19 made under 35 U.S.C. 102(b) as being clearly anticipated by May (US 5725312) and the rejection of claim 16 rejected under 35 U.S.C. 103(a) as being unpatentable over May (US 5725312) further in view of Hayashi et al. (US 6074097) have been withdrawn.
4. In light of applicant's arguments the rejection of claims 41, 42, 47-49,54, 58,59,61, 102 and, 104 are rejected under 35 U.S.C. 103(a) as being unpatentable over May (US 5725312) in view of Thieman et al. (WO 98/45180) and the rejection of claim 56 rejected under 35 U.S.C. 103(a) as being unpatentable over May (US 5725312) in view of Thieman et al. (WO 98/45180) further in view of Hayashi et al. (US 6074097) have been withdrawn.

***Claim Rejections - 35 USC § 102***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1,2,6-9,14,21,23,41,42,46,47,48,49,54,61,100 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Branson (US 4927271).

7. See perforations 38 and 40 in Figure 1, Column 1, line 57 to Column 2, line 5, Column 4, lines 5-30, wherein the skirt portion is understood to be the part of the fastener attached to the bag(see above and below fastener in figure 5), and the panels are understood to be the two sides to the hood material (e.g. the points that contact 60 and 58 in Figure 5).

8. Claims 1,2,6,7-9, 14,18,19,100 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Boeckmann et al. (US 4846585).

9. See Column 1, line 5 to Column 2, line 18, Column 4, lines 25-40, Figures1-5. Note that Boeckmann et al. teach item 14 is a *fold* (Column 2, lines 40-45) , the skirt for the fastener (i.e. the portion that supports items 16 and 17 and attaches them to the bag) extends above and below the fastener, and the web material is understood to be items 11,12,20.

10. Claims 21, 23, 41,42,46-49,54,61, 100, 101,102,104 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Thieman et al. (WO 98/45180).

11. Regarding claims 21,23,41,42,46,48,49,54,61, 100,101,102, 104, See Figures 7/7a,8 in light of the abstract, Page 4, lines 13-30, and page 6, lines 1-11.

12. Regarding claim 47, items 72 are integral with item 60.

13. Claims 75-77,79,82-86 and 100 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by May (US 5725312).

14. Regarding claims 75-77,79,82-86 and 100, see column 1, lines 37-58 (i.e. May teaches an improvement upon cheese containing bags), column 8, lines 35-48, column 27, lines 48-60, Figure 26 in light of Figures 3,7, 11,19, and column 26, line 30-column 27, line 6.

15. Claims 75-77,79,82-86 and 100 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Dobreski (US 5682730).

16. Regarding claims 75-77,79,100, see figures 1 and 2 (e.g. opening formed by 28/22 at the opposite end of the bag from fold 20, skirts 26 & 30, lines of weakness 38), column 2, line 27 to column 3, line 14, and column 3, lines 53-58.

17. Regarding claims 82-86, see Figures 1 and 2, column 3, lines 14-16, and column 3, line 53-column 4, line 15.

***Claim Rejections - 35 USC § 103***

18. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

19. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Boeckmann et al. (US 4846585), as applied above to claims 1,2,6,7-9, 14,18,19,100 further in view of Hayashi et al. (US 6074097).

20. Hayashi et al also teach reclosable food bags with an area of weakness ( Column 20, lines 10-26). Hayashi is relied on as evidence of the conventionality of providing either perforations or scoring (i.e. grooves), as recited in claim 56 (Column 18, lines 31-40, Figure 10). Therefore, once it was known to include an area of weakness in combination with a reclosable bag, to select any particular type of weakness such as perforations or scoring would have been an obvious design choice, since Hayashi et al. teach perforations or scoring are possible.

21. Claim 56 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thieman et al. (WO 98/45180) as applied to claims 21, 23, 41,42,46-49,54,61, 100, 101,102,104 above, further in view of Hayashi et al. (US 6074097).

Thieman et al. teach a linear area of weakness comprising perforations, but is silent in teaching scoring. Hayashi et al also teach reclosable food bags with an area of weakness ( Column 20, lines 10-26). Hayashi is relied on as evidence of the conventionality of providing either perforations or scoring (i.e. grooves), as recited in claim 56(Column 18, lines 31-40, Figure 10). Therefore, once it was known to include an area of weakness in combination with a reclosable bag, to select any particular type of weakness such as perforations or scoring , would have been an obvious design choice since Hayashi et al. teach either perforations or scoring are possible.

22. Claims 58 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thieman et al. (WO 98/45180) as applied to claims 21, 23, 41,42,46-49,54,61, 100, 101,102,104 above, further in view of May (US 5725312)

23. Regarding claim 58 and 59, although Thieman et al. teach perforations 72 in the web material, Thieman et al. are silent in teaching the web material is multiple laminate film wherein at least one layer comprises the tear areas. May also teaches a web material for tearing and accessing a fastener structure. May teaches a bag made of a single sheet of multi-laminate film (column 8, lines 35-48 and column 26, line 30-column 27, line 6). Therefore, it would have been obvious to modify Thieman et al. and include a multilayer laminate with at least one layer comprising the tear areas since one would have been substituting one type of film with a tear area for another for the same purpose: accessing a fastener structure on a bag.

24. Claim 93 is rejected under 35 U.S.C. 103(a) as being unpatentable over May (US 5725312) as applied to claims 75-77,79,82-86 and 100, further in view of Hayashi et al. (US 6074097)

25. May teaches a linear area of weakness comprising perforations, but is silent in teaching scoring. Hayashi et al also teach reclosable food bags with an area of weakness ( Column 20, lines 10-26). Hayashi is relied on as evidence of the conventionality of providing either perforations or scoring (i.e. grooves), as recited in claim 56(Column 18, lines 31-40, Figure 10). Therefore, once it was known to include an area of weakness in combination with a reclosable bag, to select any particular type



of weakness such as perforations or scoring , would have been an obvious design choice since Hayashi et al. teach either perforations or scoring are possible.

### ***Response to Arguments***

26. Applicant's arguments filed August 7,2003 have been fully considered.

27. With respect to the rejection of claims 75-77,79,82-86 and 100 under USC 102(b) as being anticipated by May, applicant argues that May does not teach the reclosable fastener positioned in the fold and beyond the lines of weakness. However, it is noted that these features upon which applicant relies are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

28. With respect to the rejection of claims 1,2,6,7-9, 14,18,19 under 35 U.S.C. 102(b) as being anticipated by Boeckmann et al., the rejection now specifies to which "fold" the examiner is referring. Understanding the lower end of the bag to be a "fold", Boeckmann et al. meet the structural limitations of the claim.

29. With respect to the rejection of claims 75-77,79,82-86 and 100 under USC 102(b) as being anticipated by Dobreski, applicant argues that Dobreski does not teach the reclosable fastener positioned in the fold and beyond the lines of weakness. However, it is noted that these features upon which applicant relies are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26

USPQ2d 1057 (Fed. Cir. 1993). Note that Dobreski teaches a fold structure with an opening at the opposite end of the fold, the bag comprises one sheet of web material, and the fastener includes skirt material 30.

30. With respect to applicant's argument that Thieman et al. does not teach a reclosable bag comprising one sheet of web material. "Comprising" does not exclude more than one sheet of web material (MPEP 2111.03).

### ***Conclusion***

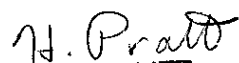
31. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

32. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

33. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen  
Examiner  
Art Unit 1761



  
HELEN PRATT  
PRIMARY EXAMINER